



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID		70472834			
CASE OFFICER		QUANITAH SAVAHL			
CASE OFFICER PHONE NO		021 684 4348			
DISTRICT		CAPE FLATS			
REPORT DATE		2019-10-28			
INTERVIEW REQUESTED	APPLICANT	YES		NO	√
	OBJECTOR(S)				√

MPTSW67/11/19

ITEM NO

WARD 67: APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 4349 PELIKAN PARK, 9 GOLDFINCH STREET (NEW HORIZONS)

1 EXECUTIVE SUMMARY

Property description	Erf 4349 Pelikan Park
Property address	9 Goldfinch Street (New Horizons)
Site extent	148m ²
Current zoning	Single Residential 1
Current land use	Residential (dwelling house)
Overlay zone applicable	None
Submission date	09 September 2019
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Yes, unauthorised building work – garage
Has owner applied for the determination of an administrative penalty	Yes, the Administrative Penalty must be still be determined.
Has the City Manager applied to the MPT for an order that a person who is contravening the MPBL must pay an administrative penalty in an amount determined by the MPT	No
Has the City issued a demolition directive i.t.o section 128 of the MPBL? If yes, an administrative penalty may not be applied for.	No
Has the City served a notice on the owner or other person in respect of the unlawful land use or building work which required the owner or other person to apply for the determination of an administrative penalty?	No

2 DECISION AUTHORITY

2951

For decision by the Municipal Planning Tribunal

3 BACKGROUND / SITE HISTORY

The property is zoned Single Residential 1 in terms of the Development Management Scheme (DMS). This property falls part of a large housing development which was approved subject to conditions of which some relate to building lines. The subject property has a rear building line of 1m. A portion of the garage contravenes the rear/common boundary building line.

4 SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation of the proposed is attached as Annexure C and may be summarised as follows:

- Owner had a bad experience with previous applicant who has since left the country.
- Owner continued building not knowing if plans were approved.
- Not much knowledge of building plan process.
- Vehicle needed protection from natural elements.
- Garage contravenes the 1m rear building line.

5 ASSESSMENT OF APPLICATION

5.1 As indicated above, the unauthorised building work is in contravention of the Development Rules for New Horizons Residential Development.

5.2 In terms of section 129(7)(a) of the By-Law, an administrative penalty for a building work contravention may not be more than 100% of the value of the building, construction and engineering work unlawfully carried out.

Administrative Penalty: Calculation

5.2.1 Unauthorised building work

Value per m² (as provided in the spreadsheet) × Total Unlawful area (m²) = R

Value per m ²	=	R 5,720,00
Total Unlawful area (garage)	=	3,60m ²
Calculated value (Value x Area)	=	R20 592,00

An amount which is not more than 100% of R20 592,00 may be imposed as administrative penalty.

- 5.3 The following factors need to be considered when determining an appropriate administrative penalty, as contemplated by section 129(8) of the By-Law:

a) The nature, duration, gravity and extent of the contravention

Nature - A portion of the unauthorised garage is constructed within the 1m rear/common boundary building line.

Duration - According to the applicant, the unauthorised extension took place 6 months ago. However, according to City Viewer aerial photography, the unauthorised garage was already in existence from at least January 2017.

Gravity - The contravention does not appear to pose a hazard in terms of safety, fire or health. No vehicular sight lines will be affected as the contravention occurs at the rear of the property.

Extent - The portion of the garage that is in contravention measures approximately 3,60m².

b) The conduct of the person involved in the contravention

The owner carried out the unauthorised building work but according to the motivation, was unaware of the building plan process and had a bad experience with the previous applicant.

c) Whether the unlawful conduct was stopped

The unauthorised building work was constructed prior to the submission of a building plan and exists.

d) Whether a person involved in the contravention has previously contravened this By-Law or any other planning law

As far as can be ascertained, the current owner of the property has not previously contravened this By-Law or any other planning law.

- 5.4 In view of the abovementioned considerations this Department recommends that an administrative penalty to the total value of R400 as indicated below be imposed:

6 REASONS FOR DECISION

- 6.1 A portion of the garage contravenes the rear/common boundary building line.

- 6.2 The earliest photography available which shows the unauthorised building work is from January 2017 and the contravention is therefore considered to be of long duration.
- 6.3 The applicant has provided misleading information regarding the duration of the unauthorised building work.
- 6.4 The contravention is of a low gravity and a relatively minor extent.
- 6.5 As far as can be ascertained the owner of the property has not previously contravened the Municipal Planning By-Law or any other planning law.

7 RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of R400 be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 4349 Pelikan Park.

ANNEXURES

Annexure A - A1 Regional and Locality Plans
 Annexure B Plan of Contravention
 Annexure C - C1 Applicant's Motivation



Section Head : Land Use Management

Name A McCann

Tel no 021 684 4341

Date 1 November 2019

Comment



District Manager

Name Chad Newman

Tel no 021 684 4310

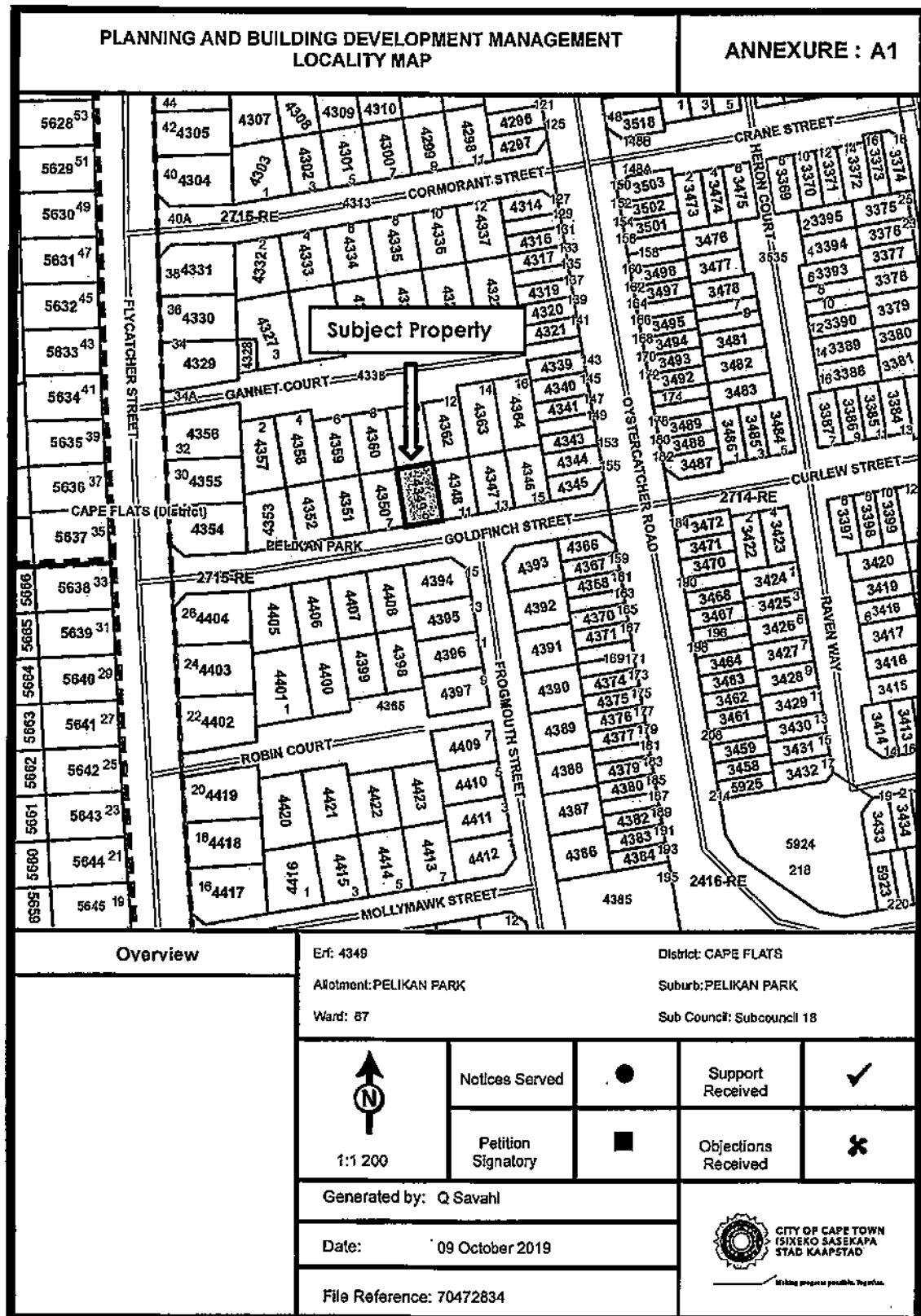
Date 5 November 2019

Comment

**ANNEXURE A – A1
REGIONAL & LOCALITY MAPS**

2954

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP		ANNEXURE : A		
Overview	Erf: 4349 Allotment: PELIKAN PARK Ward: 67			District: CAPE FLATS Suburb: PELIKAN PARK Sub Council: Subcouncil 18
	 1:16 000	Notices Served 	Support Received 	Petition Signatory
	Generated by: Q Savahl			 CITY OF CAPE TOWN ISIXEKO SASEKAPA STAD KAAPSTAD <small>Leading progress positively. Together.</small>
	Date: 09 October 2019			
	File Reference: 70472834			

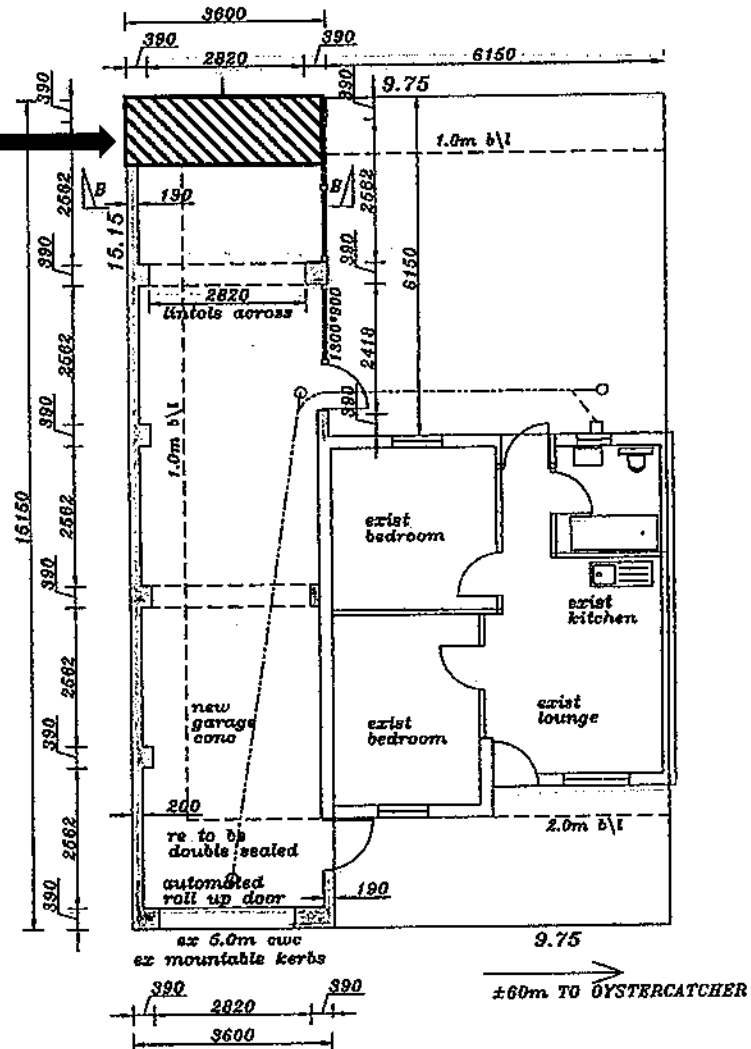


ANNEXURE B PLAN OF CONTRAVENTION

2956

Contravention

COVERAGE CALC'S	
EX DWELLING	40.13
NEW GARAGE	53.29
	93.42
ERF	147.71
	63.27



SITE AND STOREY PLAN
9 GOLDFINCH ST
PELIKAN PARK
ERF 4349
SCALE 1:100



Owner: <i>Michael Petersen</i>	Designer: A. FANIE	Project: ADDS & ALTS
Address: 9 GOLDFINCH ST PELIKAN PARK	Address: 13 NOITE STR STRAND	DRW NO: 4349/2
Signature: <i>[Signature]</i>	REG NO 21556	Erf No: 4349
Date: 15/7/2019	Signature: <i>[Signature]</i>	Scale: 1:100

**ANNEXURE C – C1
APPLICANT'S MOTIVATION**

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Motivation for Admin Penalty: Erf 4349 Pelikan Park, 9 Goldfinch Street

The owners acknowledge the Admin Penalty and humbly asks for leniency for the unauthorized built garage. The owner had a bad experience with the previous person assisting with the building plans. The assistant has since moved to England and cannot be contacted.

The owners did not know if the plans was approved and continued with the building of the garage as they did not have much knowledge of the building plan process. The area is still full of sand and the owners wanted to protect their vehicle as well as protection from the natural elements, i.e. wind, storms, sun, etc.

Please note that the garage is permitted within the street and common building line and only contravene the 1,0m rear building line. The garage is a non-habitable structure and do not impact on the streetscape or the surrounding properties existing rights.

The existing site is 148 Square Meters and the unauthorized garage is 53 Square Meters.

The applicant on behalf of the subject property owners

Mogamat Essop (Applicant)

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SECTION G: FURTHER APPLICATION DETAIL

Nature of departure / amendment / approval required:

<input type="checkbox"/>	Building line encroachment						
	Street		From		m	To	
	Street		From		m	To	
	Common		From		m	To	
	Common		From		m	To	
	Common		From		m	To	
<input type="checkbox"/>	Exceeding permissible site coverage		From		%	To	
<input type="checkbox"/>	Exceeding maximum permitted floor area		From		m ²	To	
<input type="checkbox"/>	Exceeding maximum permitted floor factor		From			To	
<input type="checkbox"/>	Exceeding height restriction / permissible no. of storeys		From		m/st	To	
<input type="checkbox"/>	Exceeding height restriction related to wallplate		From		m	To	
<input type="checkbox"/>	Relaxation of window and door placement setback requirement		From		m	To	
<input type="checkbox"/>	Relaxation of on-site parking / loading bay requirements		From		bays	To	
<input type="checkbox"/>	Erection of second / additional dwelling unit						
<input type="checkbox"/>	Work in Heritage Protection Overlay Zone (please specify)						
<input type="checkbox"/>	Other (please specify)						
<input type="checkbox"/>	Administrative penalty						

Additional description of departures / amendments / approval required (if necessary)

SECTION H: ADMINISTRATIVE PENALTY

The following is required for an application for the determination of an administrative penalty made in terms of section 42 (e) of the MPBL. Give a description of the land use or building work / structure(s) that are in contravention on the property.

Garage

Provide the extent(s) in m² of the property used for the unlawful use activity, and unlawful building work / structure(s) that contravene the MPBL. (Indicate extent(s) on a building plan / map / plan / diagram)

Property Square Meters = 147,71 Square Meters

Unauthorized Work (Garage) = 53,29 Square Meters

Describe the duration of the contravention(s).

Six (6) Months

Has the unlawful activity ceased? ☒ Yes ☐ No If yes, provide the date when the activity ceased 2 8 0 2 2 0 1 9Has the owner / person previously contravened the MPBL, or a previous Planning Law? ☒ Yes ☐ No If yes, please provide more details below.

Provide the municipal valuation of the erf.

R 400 000.00

State your determination of the value of the building work / structure(s) and engineering work unlawfully carried out, that is in contravention of the MPBL.

R 35 000.00

Note: Provide supporting documentation for your determination.

Amended on: 16/01/2019